



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-228; NRC-2012-0286; License No. R-98; EA-13-097]

Order Prohibiting Operation of Aerotest Radiography and Research Reactor

I.

Aerotest Operations, Inc. (Aerotest, the licensee), is the holder of Facility Operating License No. R-98, issued on July 2, 1965, by the U.S. Atomic Energy Commission, now the U.S. Nuclear Regulatory Commission (NRC). Facility Operating License No. R-98 was issued pursuant to Section 104c. of the Atomic Energy Act of 1954, as amended (AEA), and part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities." The license authorizes the operation of the Aerotest Radiography and Research Reactor (ARRR) in accordance with the conditions specified therein. The ARRR is located on the licensee's site in San Ramon, California. Autoliv, Inc. is the ultimate corporate parent of Aerotest and, therefore, has ultimate control of Aerotest's license.

II.

Section 104d., "Medical Therapy and Research and Development," of the AEA and 10 CFR 50.38, "Ineligibility of Certain Applicants," prohibit the issuance of any license for a utilization and production facility useful in the conduct of research and development "to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government."

Autoliv, Inc. is headquartered in Stockholm, Sweden. The majority of Autoliv, Inc.'s board of directors and executive officers are non-U.S. citizens. The majority of Autoliv, Inc.'s outstanding stock is held by non-U.S. citizens. Thus, Autoliv, Inc. is a foreign corporation for the

purposes of the AEA, and its ownership of ARRR is prohibited. Nonetheless in 2000, Autoliv, Inc. acquired Aerotest through intermediate acquisition of several wholly owned companies. As a result, Autoliv, Inc. now has indirect control of the Aerotest license. Although Autoliv, Inc.'s acquisition of Aerotest constituted an indirect transfer of control of the Aerotest license, this transfer was not the subject of an application for prior consent of the NRC as required by 10 CFR 50.80, "Transfer of Licenses," and, therefore, the transfer was neither reviewed nor approved by the NRC.

On October 7, 2003 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML040430495), the NRC staff issued a letter to Autoliv instructing Autoliv to develop a full divestiture plan or partial divestiture and negation action plan and to report progress on the plan every six months thereafter. Autoliv developed a plan but was not able to divest Aerotest of foreign ownership and control.

By letter dated February 28, 2005, as supplemented by letters dated May 5, 2008; March 9, July 21, and September 4, 2009; and January 7, 2010 (ADAMS Accession Nos. ML13120A434, ML103370137, ML120900629, ML092080163, ML092600267, ML100140375, respectively), Aerotest applied for renewal of the ARRR operating license. The licensee has been operating under the timely renewal provisions of 10 CFR 2.109, "Effect of Timely Renewal Application," since the expiration of the license on April 16, 2005. Upon review of the renewal application, the NRC staff noted that Aerotest still did not satisfy the requirements of Section 104d. of the AEA and 10 CFR 50.38. On July 9, 2009 (ADAMS Accession No. ML090830578), the NRC issued a proposed denial of the license renewal because of the foreign ownership issue.

On July 21, 2009 (ADAMS Accession No. ML092080163), Aerotest notified the NRC that Autoliv ASP, Inc. (which is wholly owned by Autoliv, Inc.) and X-Ray Industries, Inc., had entered into a non-binding letter of intent for the sale of the ARRR to X-Ray Industries, Inc. On

January 7, 2010, as amended by letters dated January 19, February 2, March 23, and April 1, 2010 (ADAMS Accession Nos. ML100140375, ML100490068, ML100880295, ML100880338, ML100980153, respectively), the NRC received a license transfer application from Autoliv and X-Ray Industries. An NRC Order, dated July 6, 2010 (ADAMS Accession No. ML101380228), approved the license transfer and provided 60 days (extended to October 15, 2010, through letter dated September 13, 2010 (ADAMS Accession No. ML102460245)), for the transfer to be consummated. The Order expired without the transfer of the license.

On October 15, 2010, Aerotest voluntarily ceased day-to-day operations (reactor operation continued for surveillances). On February 26, 2011 (ADAMS Accession No. ML103640183), the NRC responded to a January 7, 2011 (ADAMS Accession No. ML1101180463), letter from Aerotest by issuing Confirmatory Action Letter (CAL) No. NRR-2011-001 to Aerotest. The CAL confirmed actions Aerotest would take to prepare a decommissioning plan, manage and provide funding for the disposition of fuel, and file an application for a possession-only license amendment.

Aerotest did not submit a decommissioning plan and possession-only license amendment application as discussed in the CAL. Consequently, on January 18, 2012 (ADAMS Accession No. ML120200203), the NRC held a public meeting with Aerotest to discuss the status of the decommissioning plan and possession-only license amendment application. At the conclusion of the meeting, Aerotest agreed to provide the NRC with milestones and deliverables as part of a CAL status report due on January 24, 2012.

In a letter dated January 24, 2012 (ADAMS Accession No. ML12027A010), Aerotest stated that by March 31, 2012, it would inform the NRC that either negotiations for acquisition of the reactor had ended or negotiations had resulted in a selected buyer. In a letter dated March 30, 2012 (ADAMS Accession No. ML12093A399), Aerotest informed the NRC that it had

selected a buyer, Nuclear Labyrinth, LLC, and that a license transfer application would be submitted by May 30, 2012. Aerotest and Nuclear Labyrinth, LLC, submitted a license transfer application on May 30, 2012 (ADAMS Accession Nos. ML12152A233 and ML12180A384). The NRC accepted the application for review on August 14, 2012 (ADAMS Accession No. ML12213A486), after the applicants submitted supplemental information on July 19, 2012 (ADAMS Accession No. ML122021201). The NRC sent requests for additional information to the applicants on two occasions and reviewed the applicants' responses, dated October 15, 2012, and January 10, 2013 (ADAMS Accession Nos. ML12291A508 and ML13015A395). A public meeting was held on December 19, 2012 (ADAMS Accession No. ML13018A003), because the October 15, 2012, submission was insufficient. During the meeting, the NRC staff reiterated the financial information required for NRC approval of the indirect transfer.

III.

The NRC staff has completed its safety evaluation (ADAMS Accession No. ML13129A001) of the license transfer request. The NRC staff has concluded that it does not have reasonable assurance, as required by 10 CFR 50.33, "Contents of Applications; General Information," that Nuclear Labyrinth, LLC, or Aerotest Operations, Inc., would have sufficient funding to conduct the activities authorized by the ARRR license if the license were transferred. Consequently, the NRC staff is denying the license transfer request. Therefore, the ARRR remains under Autoliv, Inc.'s foreign ownership, control, and domination. Based on the information provided above, the NRC finds that Aerotest is in violation of Section 104d. of the AEA and 10 CFR 50.38, which prohibit foreign ownership, control, or domination of licenses issued under 10 CFR part 50.

Aerotest has been out of compliance with Section 104d. of the AEA and 10 CFR 50.38 since Autoliv, Inc. took control in 2000. Despite the licensee's and the NRC's efforts, Aerotest continues to be out of compliance. The NRC cannot renew the Aerotest license because Aerotest is not authorized to hold a 10 CFR part 50 license.

Therefore, the NRC staff is denying the license renewal application and is hereby prohibiting the licensee from operating the ARRR. In addition, Aerotest must begin the process of decommissioning the ARRR.

IV.

Accordingly, pursuant to Sections 104c., 104d., 161b., 161i., 161o., 182, and 186 of the AEA and the Commission's regulations in 10 CFR 2.202, "Orders," and 10 CFR Part 50,

IT IS HEREBY ORDERED THAT:

I. FACILITY OPERATING LICENSE R-98 IS MODIFIED AS FOLLOWS:

- a. The licensee is prohibited from operating the ARRR. The licensee shall maintain the ARRR in a shutdown condition.
- b. Facility Operating License No. R-98 is amended to possession-only status as follows:
 1. Pursuant to Section 104c of the AEA and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," the licensee shall possess, but neither use nor operate, the reactor at the designated location in San Ramon, California, in accordance with the procedures and limitations set forth in its license;
 2. Pursuant to the AEA and 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," the licensee shall possess, but neither receive nor use, up to

5.0 kilograms of contained uranium 235 in connection with possession of the reactor; and

3. Pursuant to the AEA and 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," the licensee shall:

i. possess, but neither receive nor use, a 2 curie americium-beryllium neutron startup source; and

ii. possess, but neither use or separate, byproduct material produced by past operation of the reactor.

II. Within 30 days of the date of this order, the licensee shall submit to the NRC:

a. An updated decommissioning plan for the ARRR that contains the elements required by 10 CFR 50.82(b), including:

1. a decommissioning funding plan, and

2. a fuel management plan that describes the means for funding the management of the fuel until permanent disposal.

b. If necessary, a license amendment request to modify the technical specifications to reflect the possession-only license conditions.

V.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the *Federal Register* (FR). In addition, the licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the FR. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director of the Office

of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 and include a statement of good cause for the extension.

VI.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days before the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating, and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online Web-based submission form. To serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the

Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the document through the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call to 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and marked "Attention: Rulemaking and Adjudications Staff;" or (2) courier, express mail, or expedited delivery service addressed to the Office of the Secretary, 16th Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, and marked "Attention: Rulemaking and Adjudications Staff." Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the

presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include private personal information such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d). If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or any written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published

in the FR without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

IT IS SO ORDERED. Dated at Rockville, Maryland, this 24th day of July, 2013.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman, Director,
Office of Enforcement.